

Roberg-Perez Decl. Ex. A

March 7, 2011

**Best Buy's Opposition to Plaintiffs'
Preliminary Injunction Motion**

Bradley M. Kuhn - 11/11/2010
Software Freedom Conservancy, Inc., et al. vs. Best Buy Co., Inc., et al.

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
09-CV-10155 (SAS)

SOFTWARE FREEDOM CONSERVANCY, INC.

and ERIK ANDERSEN,

Plaintiffs,

-against-

BEST BUY CO., INC., SAMSUNG

ELECTRONICS AMERICA, INC.,

WESTINGHOUSE DIGITAL ELECTRONICS,

LLC, JVC AMERICAS CORPORATION,

WESTERN DIGITAL TECHNOLOGIES, INC.,

ROBERT BOSCH LLC, PHOEBE MICRO, INC.,

HUMAX USA, INC., COMTREND CORPORATION,

DOBBS-STANFORD CORPORATION, VERSA

TECHNOLOGY, INC., ZYXEL COMMUNICATIONS,

INC., ASTAK, INC. and GCI TECHNOLOGIES

CORPORATION,

Defendants

VIDEOTAPED DEPOSITION OF BRADLEY M. KUHN

New York, New York

Thursday, November 11, 2010

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<p style="text-align: right;">Page 74</p> <p>1 BRADLEY M. KUHN</p> <p>2 software?</p> <p>3 A. Yes.</p> <p>4 Q. What is that difference?</p> <p>5 A. This is a hotly-debated topic in the</p> <p>6 open-source and free software community. I can</p> <p>7 give you quite a treatise on it. I'm not sure</p> <p>8 what specifically you're looking for.</p> <p>9 Q. Is there a way to give me a nutshell</p> <p>10 answer, for example, just a few sentences of the</p> <p>11 difference?</p> <p>12 A. Unfortunately, free software people</p> <p>13 aren't known for nutshell answers, but I will</p> <p>14 certainly try.</p> <p>15 Free software and open-source are, by</p> <p>16 some, considered two different terms for the same</p> <p>17 thing.</p> <p>18 I don't agree with that conclusion for</p> <p>19 two reasons: One, free software is generally</p> <p>20 referring to both software that is meeting the</p> <p>21 free software definition as published by the Free</p> <p>22 Software Foundation, and, also, generally, free</p> <p>23 software refers to development that has a slant</p> <p>24 towards the political beliefs that I was</p> <p>25 describing earlier with regard to rights of users.</p> <p style="text-align: right;">Page 75</p> <p>1 BRADLEY M. KUHN</p> <p>2 Open source is a term that was coined</p> <p>3 in 1999 primarily as a way to communicate the</p> <p>4 ideas of free software in a much more mundane and</p> <p>5 nonpolitical fashion.</p> <p>6 Also, open source is something with</p> <p>7 regard to software when it fits the open-source</p> <p>8 definition as published by the Open Source Initiative,</p> <p>9 Incorporated. They have a list of licenses which they</p> <p>10 define as open-source licenses. The Free Software</p> <p>11 Foundation has a list of licenses it defines as free</p> <p>12 software licenses. Those lists are very close, but not</p> <p>13 identical.</p> <p>14 Q. I understand.</p> <p>15 How many free and open-source software</p> <p>16 projects is the Conservancy the corporate home</p> <p>17 for?</p> <p>18 A. As of yesterday, 23.</p> <p>19 Q. Is the Linux kernel one of these</p> <p>20 projects?</p> <p>21 A. No.</p> <p>22 Q. Okay.</p> <p>23 Is BusyBox one of the open-source</p> <p>24 software projects -- the free and open-source</p> <p>25 software projects that the Conservancy sponsors?</p>	<p style="text-align: right;">Page 76</p> <p>1 BRADLEY M. KUHN</p> <p>2 A. Yes.</p> <p>3 Q. What does "Fiscally sponsoring a</p> <p>4 project" mean?</p> <p>5 MR. WILLIAMSON: Objection.</p> <p>6 Calls for a legal conclusion.</p> <p>7 Q. Can you answer giving me the factual</p> <p>8 bases for fiscal sponsorship?</p> <p>9 A. What I can give you is the</p> <p>10 understanding of what a fiscal sponsor is in</p> <p>11 nonproject management terms.</p> <p>12 Would that be adequate for you?</p> <p>13 Q. Yes, yes.</p> <p>14 A. Typically, when a project of any</p> <p>15 kind -- and this often happens in the art world,</p> <p>16 for example -- does not have enough resources,</p> <p>17 staffing, know how to form their own nonprofit</p> <p>18 organization, they look to an existing nonprofit</p> <p>19 organization that's willing to be their fiscal</p> <p>20 sponsor.</p> <p>21 They join that organization formally,</p> <p>22 and they are able to continue their work under a</p> <p>23 nonprofit umbrella without having to go through</p> <p>24 the work of forming their own nonprofit</p> <p>25 organization.</p> <p style="text-align: right;">Page 77</p> <p>1 BRADLEY M. KUHN</p> <p>2 Q. Okay.</p> <p>3 If you know, have there been previous</p> <p>4 fiscal sponsors of BusyBox?</p> <p>5 A. I'm not aware of any.</p> <p>6 Q. Does documentation exist of the</p> <p>7 Conservancy's fiscal sponsorship of BusyBox?</p> <p>8 A. Yes.</p> <p>9 Q. I'm going to ask the reporter what</p> <p>10 we'll hand you -- to hand you I think what will be</p> <p>11 marked Exhibit 44.</p> <p>12 THE WITNESS: I'd really appreciate a</p> <p>13 break in five, ten minutes, if that's</p> <p>14 possible at all?</p> <p>15 I'm sorry for the close time, but ...</p> <p>16 MS. ROBERG-PEREZ: We will take a</p> <p>17 short break.</p> <p>18 (Exhibit Kuhn 44, the amended fiscal</p> <p>19 sponsorship agreement, was marked for</p> <p>20 identification at this time.)</p> <p>21 Q. Mr. Kuhn, please take a moment to</p> <p>22 review, and let me know when you've done so.</p> <p>23 (Pause.)</p> <p>24 A. I've read Exhibit 44.</p> <p>25 Q. Do you recognize this document?</p>
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20 (Pages 74 to 77)

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Page 78	<p>1 BRADLEY M. KUHN</p> <p>2 A. Yes, I believe so.</p> <p>3 Q. What is it?</p> <p>4 A. This document is substantially similar</p> <p>5 to the amended fiscal sponsorship agreement that</p> <p>6 we recently executed with -- between the</p> <p>7 Conservancy and the BusyBox developers.</p> <p>8 Q. And this document in particular is</p> <p>9 with the BusyBox developer Erik Andersen, correct?</p> <p>10 Directing your attention to Page 5.</p> <p>11 A. This particular copy is only the copy</p> <p>12 with Erik Andersen's signature that he sent.</p> <p>13 Q. And that was dated September 5th,</p> <p>14 2010?</p> <p>15 A. That's the date of his signature.</p> <p>16 Q. I see.</p> <p>17 But does the document also say that</p> <p>18 the fiscal sponsorship agreement was effective</p> <p>19 August 31st, 2010?</p> <p>20 A. The agreement says that this</p> <p>21 particular agreement was effective on that date,</p> <p>22 yes.</p> <p>23 Q. Okay.</p> <p>24 Aside from this document, are there</p> <p>25 other documents that reflect the Conservancy's</p>	Page 80	<p>1 BRADLEY M. KUHN</p> <p>2 waived work product by producing this</p> <p>3 document.</p> <p>4 I have asked that you send us all</p> <p>5 copies of earlier agreements.</p> <p>6 MR. RAVICHER: And I'm not sure that</p> <p>7 we have waived, but we can set up a meet and</p> <p>8 confer to discuss that, if you'd like.</p> <p>9 MS. ROBERG-PEREZ: Very well, we can</p> <p>10 do that.</p> <p>11 BY MS. ROBERG-PEREZ:</p> <p>12 Q. Mr. Kuhn, going back to the complaint,</p> <p>13 directing your attention to the first page, you</p> <p>14 see that the Conservancy is a named co-plaintiff</p> <p>15 in this litigation, correct?</p> <p>16 A. Yes, I see that.</p> <p>17 Q. Has the Conservancy ever been party to</p> <p>18 a previous copyright infringement suit involving</p> <p>19 BusyBox?</p> <p>20 A. Not to my knowledge.</p> <p>21 Q. Okay.</p> <p>22 Mr. Andersen, I have a couple of more</p> <p>23 questions. I know you wanted a --</p> <p>24 A. I can't answer on behalf of</p> <p>25 Mr. Andersen. I'm sorry.</p>
Page 79	<p>1 BRADLEY M. KUHN</p> <p>2 fiscal sponsorship of BusyBox with regard to</p> <p>3 Mr. Andersen?</p> <p>4 A. I believe so.</p> <p>5 Q. What are those documents?</p> <p>6 A. There was an earlier version of this</p> <p>7 document that my attorneys handled for me.</p> <p>8 Q. Any other documents besides an earlier</p> <p>9 version of this document?</p> <p>10 A. If there are, they were in e-mail</p> <p>11 discussions that were either with our attorneys or</p> <p>12 produced in the discovery that you've already</p> <p>13 received.</p> <p>14 I don't know if there were any, but if</p> <p>15 they were, that's where they would be.</p> <p>16 MS. ROBERG-PEREZ: Okay.</p> <p>17 Counsel, I don't believe that we have</p> <p>18 the earlier version of this document. We</p> <p>19 may, I just haven't seen it in your</p> <p>20 production.</p> <p>21 If you could, perhaps, PDF us a copy</p> <p>22 of the earlier agreement?</p> <p>23 MR. RAVICHER: We'll object to it as</p> <p>24 work product.</p> <p>25 MS. ROBERG-PEREZ: Counsel, you've</p>	Page 81	<p>1 BRADLEY M. KUHN</p> <p>2 Q. Mr. Kuhn, I have a couple more</p> <p>3 questions, and then we can take a break.</p> <p>4 A. Thank you.</p> <p>5 Q. The first relates to Exhibit 44.</p> <p>6 You spoke about earlier versions of</p> <p>7 this agreement, and Counsel has indicated that</p> <p>8 these earlier versions are work product.</p> <p>9 Do you know if there were executed</p> <p>10 versions -- executed copies of these earlier</p> <p>11 versions?</p> <p>12 A. I simply did not handle these</p> <p>13 agreements at that time. I asked Conservancy's</p> <p>14 attorneys to do it for us.</p> <p>15 Q. Okay.</p> <p>16 Besides being executive director of</p> <p>17 the Conservancy, which I understood happened on</p> <p>18 October 1st of this year -- year, you also</p> <p>19 testified that you were president, correct?</p> <p>20 A. Yes.</p> <p>21 Q. And when did you first become</p> <p>22 president?</p> <p>23 A. It was at some point in 2006. I,</p> <p>24 unfortunately, don't recall the exact date.</p> <p>25 Q. Okay.</p>

21 (Pages 78 to 81)

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Page 86	<p>1 BRADLEY M. KUHN</p> <p>2 said, the document was handled completely by my</p> <p>3 attorneys --</p> <p>4 Q. Okay.</p> <p>5 A. -- two of whom, as you know, were</p> <p>6 directors of the Conservancy as well.</p> <p>7 Q. Okay.</p> <p>8 In this litigation, the Conservancy</p> <p>9 has alleged that it is the enforcement agent for</p> <p>10 Mr. Andersen with respect to BusyBox, correct?</p> <p>11 A. Yes.</p> <p>12 Q. And, in this litigation, Mr. Andersen</p> <p>13 has been identified as the author and developer of</p> <p>14 BusyBox, correct?</p> <p>15 A. Yes.</p> <p>16 Q. No other authors are identified in</p> <p>17 your complaint, correct?</p> <p>18 A. Not in the complaint, no.</p> <p>19 Q. No other -- no other developers of</p> <p>20 BusyBox are identified in the complaint either,</p> <p>21 correct?</p> <p>22 A. Yes.</p> <p>23 Q. Does the Conservancy have an</p> <p>24 assignment of all rights in any version of BusyBox</p> <p>25 that is registered at the copyright office?</p>	Page 88	<p>1 BRADLEY M. KUHN</p> <p>2 copyright office?</p> <p>3 A. I don't know.</p> <p>4 MS. ROBERG-PEREZ: I'd like the</p> <p>5 reporter to hand you what will be marked as</p> <p>6 deposition Exhibit 45.</p> <p>7 (Exhibit Kuhn 45, Plaintiff's Response</p> <p>8 to Defendant Best Buy's Second Set of</p> <p>9 Requests for Admissions, was marked for</p> <p>10 identification at this time.)</p> <p>11 BY MS. ROBERG-PEREZ:</p> <p>12 Q. Take a minute to review the document,</p> <p>13 and let me know when you've done so.</p> <p>14 A. I may take more than a minute. It's a</p> <p>15 couple of pages here.</p> <p>16 Q. Okay.</p> <p>17 (Pause.)</p> <p>18 A. I've reviewed Exhibit 45.</p> <p>19 Q. Okay.</p> <p>20 Do you see that it is entitled,</p> <p>21 "Plaintiff's Response to Defendant Best Buy's</p> <p>22 Second Set of Requests for Admissions"?</p> <p>23 A. I see that as the title, yes.</p> <p>24 Q. Do you see that on Page 4, your</p> <p>25 attorney, Mr. Williamson, signed this?</p>
Page 87	<p>1 BRADLEY M. KUHN</p> <p>2 MR. WILLIAMSON: Objection.</p> <p>3 Calls for a legal conclusion.</p> <p>4 Q. You may answer.</p> <p>5 A. Not that I'm aware of.</p> <p>6 Q. Does the Conservancy have an</p> <p>7 assignment of all rights in any version of BusyBox</p> <p>8 at all, whether or not registered at the copyright</p> <p>9 office?</p> <p>10 A. Not that I'm aware of.</p> <p>11 Q. Are you familiar with Version 0.60.3</p> <p>12 of BusyBox?</p> <p>13 MR. WILLIAMSON: Objection.</p> <p>14 Vague.</p> <p>15 Q. You may answer.</p> <p>16 A. I know that that is a version of</p> <p>17 BusyBox that was released.</p> <p>18 Q. And do you know if this is a version</p> <p>19 of BusyBox that is registered at the copyright</p> <p>20 office with Mr. Andersen as an author?</p> <p>21 A. Without reviewing the copyright</p> <p>22 registration, I wouldn't want to testify certainly</p> <p>23 which exact version was registered.</p> <p>24 Q. Do you know if Mr. Andersen has more</p> <p>25 than one version of BusyBox registered at the</p>	Page 89	<p>1 BRADLEY M. KUHN</p> <p>2 A. Well, I see S/Aaron Williamson.</p> <p>3 Q. Okay.</p> <p>4 Directing your attention up to Page 3,</p> <p>5 Request No. 13.</p> <p>6 Do you see that Request No. 13 says:</p> <p>7 "Admit that plaintiff Erik Andersen did not</p> <p>8 register other versions of BusyBox in addition to</p> <p>9 BusyBox Version 0.60.3 at the United States</p> <p>10 Copyright Office."</p> <p>11 A. Yes, I see that's Request No. 13.</p> <p>12 Q. And do you see that the response to</p> <p>13 Request No. 13 is "Admitted"?</p> <p>14 A. Yes, I see that.</p> <p>15 Q. Do you have any factual basis on which</p> <p>16 to dispute that admission?</p> <p>17 A. I have no factual basis to dispute nor</p> <p>18 confirm that admission. I'm just --</p> <p>19 Q. Okay.</p> <p>20 A. -- not aware of the details of the</p> <p>21 copyright registration --</p> <p>22 Q. Okay.</p> <p>23 A. -- as written by Mr. Williamson.</p> <p>24 Q. Okay.</p> <p>25 I'd like to go back to language that</p>

23 (Pages 86 to 89)

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Page 90	<p>1 BRADLEY M. KUHN</p> <p>2 the Conservancy used in its allegations in the</p> <p>3 complaint regarding the Conservancy being a</p> <p>4 copyright enforcement agent.</p> <p>5 I'd like to direct your attention back</p> <p>6 to Exhibit 28.</p> <p>7 A. Okay.</p> <p>8 Q. Looking at the second full paragraph</p> <p>9 that you wrote, do you see that you wrote: "If</p> <p>10 you would like a further delegation for the</p> <p>11 Conservancy to act as your agent with regard to</p> <p>12 GPL enforcement, that is certainly possible and</p> <p>13 can be done without actual copyright assignment of</p> <p>14 BusyBox-/uClibc to the Conservancy."</p> <p>15 Do you see that?</p> <p>16 A. Yes, I see that's what's on the page</p> <p>17 here.</p> <p>18 Q. What was your understanding then, in</p> <p>19 2006, of what the Conservancy could do as</p> <p>20 Mr. Andersen's agent with respect to GPL</p> <p>21 enforcement?</p> <p>22 A. Primarily, I understood it to mean</p> <p>23 that Conservancy could, at a minimum, handle</p> <p>24 communications with the SFLC, details about</p> <p>25 strategy and plans for GPL enforcement, without</p>	Page 92	<p>1 BRADLEY M. KUHN</p> <p>2 Conservancy acting as Mr. Andersen's enforcement</p> <p>3 agent?</p> <p>4 A. Yes, that's my understanding.</p> <p>5 Q. Okay.</p> <p>6 Mr. Kuhn, do you have a factual basis</p> <p>7 for your understanding that the Conservancy could</p> <p>8 be a plaintiff in a lawsuit on BusyBox's copyright</p> <p>9 infringement?</p> <p>10 A. Those kinds of issues are things that</p> <p>11 I typically discuss with my attorneys.</p> <p>12 Q. Okay.</p> <p>13 And outside of discussions with your</p> <p>14 attorneys, is there anything that you can point me</p> <p>15 to?</p> <p>16 A. I am simply not familiar with the</p> <p>17 Rules of Civil Procedure, that I've heard them</p> <p>18 called before, to know what can and can't be done</p> <p>19 and so forth.</p> <p>20 I call an attorney when I have those</p> <p>21 kinds of questions. That's what you guys are for.</p> <p>22 Q. I understand. Fair enough.</p> <p>23 MS. ROBERG-PEREZ: I apologize,</p> <p>24 Counsel, I'm just looking for some copies.</p> <p>25 MR. WILLIAMSON: Take your time.</p>
Page 91	<p>1 BRADLEY M. KUHN</p> <p>2 having to bug Erik with each individual question.</p> <p>3 Q. Anything else?</p> <p>4 A. That was the primary goal at the time</p> <p>5 for having Conservancy named as his enforcement</p> <p>6 agency.</p> <p>7 I understood it to mean that we could</p> <p>8 possibly in the future do other things on Erik's</p> <p>9 behalf.</p> <p>10 Q. What other things?</p> <p>11 A. My understanding was that we would, if</p> <p>12 we wanted to, be able to send letters in the</p> <p>13 similar fashion to which I described we used to do</p> <p>14 at FSF to alleged violators to try to get them</p> <p>15 into compliance, to conduct discussions with</p> <p>16 violators to convince them to coming into</p> <p>17 compliance was a good idea, etc.</p> <p>18 Q. Anything besides what we talked about</p> <p>19 earlier?</p> <p>20 A. I understood it to mean that</p> <p>21 Conservancy could be a plaintiff in any possible</p> <p>22 litigation that arise -- arose from failure to</p> <p>23 receive response from alleged GPL violators.</p> <p>24 Q. And is your understanding today the</p> <p>25 same as it was in 2006 with respect to the</p>	Page 93	<p>1 BRADLEY M. KUHN</p> <p>2 MS. ROBERG-PEREZ: I'd like the</p> <p>3 reporter to hand you what has been</p> <p>4 previously marked deposition Exhibit 29.</p> <p>5 A. I've reviewed Exhibit 29.</p> <p>6 Q. You see that this is an e-mail from</p> <p>7 Erik Andersen to you?</p> <p>8 A. It seems to be such.</p> <p>9 Q. Any reason to dispute that it is not</p> <p>10 what I just said?</p> <p>11 A. No.</p> <p>12 Q. Do you see that the date April -- is</p> <p>13 April 7th, 2007?</p> <p>14 A. I see that's the date on the page.</p> <p>15 Q. And by this date you were already</p> <p>16 president of the Conservancy, correct?</p> <p>17 A. Yes.</p> <p>18 Q. Toward the bottom of the page, do you</p> <p>19 see that Erik has written: "As a copyright holder</p> <p>20 in the Conservancy's BusyBox and uClibc projects,</p> <p>21 I appoint the Conservancy as my agent in</p> <p>22 enforcement of those copyrights and the GPL and</p> <p>23 LGPL licenses (respectively) on those software</p> <p>24 packages."</p> <p>25 A. I see that's what's on the page.</p>

24 (Pages 90 to 93)

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Page 94	<p>1 BRADLEY M. KUHN</p> <p>2 Q. Is this the document that appointed</p> <p>3 the Conservancy to be Andersen's enforcement agent</p> <p>4 in BusyBox?</p> <p>5 MR. WILLIAMSON: Objection.</p> <p>6 Calls for a legal conclusion.</p> <p>7 Q. You may answer.</p> <p>8 A. I recall receiving this e-mail, and my</p> <p>9 understanding was that it did appoint Conservancy</p> <p>10 as Erik Andersen's agent in enforcement of BusyBox</p> <p>11 and uClibc copyrights.</p> <p>12 Q. Okay.</p> <p>13 Aside from this e-mail and Exhibit 44,</p> <p>14 which is the amended and restated fiscal</p> <p>15 sponsorship agreement between the Conservancy</p> <p>16 Andersen, and the earlier version that I'm told is</p> <p>17 work product, although we don't accept that, are</p> <p>18 there any other agreements between Andersen and</p> <p>19 the Conservancy on BusyBox?</p> <p>20 MR. WILLIAMSON: Objection.</p> <p>21 Privilege.</p> <p>22 MS. ROBERG-PEREZ: The fact of an</p> <p>23 agreement is not privileged.</p> <p>24 A. The fiscal sponsorship agreement and</p> <p>25 this appointment of copyright enforcement agency</p>	Page 96	<p>1 BRADLEY M. KUHN</p> <p>2 A. No.</p> <p>3 Q. Are you aware if Mr. Landley has</p> <p>4 appointed anyone else to act as enforcement agent</p> <p>5 for BusyBox for him?</p> <p>6 MR. WILLIAMSON: Objection.</p> <p>7 Privilege.</p> <p>8 BY MS. ROBERG-PEREZ:</p> <p>9 Q. Are you going to take your counsel's</p> <p>10 advice?</p> <p>11 A. As I mentioned before, I make it a</p> <p>12 general rule to try and always take my counsel's</p> <p>13 advice.</p> <p>14 Q. Okay.</p> <p>15 MS. ROBERG-PEREZ: Asking the reporter</p> <p>16 to what has been -- to hand you what has</p> <p>17 been previously marked as deposition Exhibit</p> <p>18 30.</p> <p>19 Q. Take a moment to review, and let me</p> <p>20 know when you've done so.</p> <p>21 (Pause.)</p> <p>22 A. I've reviewed Exhibit 30.</p> <p>23 Q. Do you see that this is an e-mail from</p> <p>24 you to Matt Kraai?</p> <p>25 A. It appears to be an e-mail from me to</p>
Page 95	<p>1 BRADLEY M. KUHN</p> <p>2 are the only two formal agreements that I know</p> <p>3 exist between Erik Andersen and the Conservancy.</p> <p>4 Q. Are there any informal agreements that</p> <p>5 exist?</p> <p>6 A. Erik and I have talked frequently with</p> <p>7 our legal counsel. There could have been informal</p> <p>8 agreements at various times for various different</p> <p>9 issues. I don't recall exactly what they were.</p> <p>10 They were informal.</p> <p>11 Q. Okay.</p> <p>12 Does the Conservancy act as the</p> <p>13 enforcement agent for any other BusyBox author</p> <p>14 other than Mr. Andersen?</p> <p>15 A. Yes.</p> <p>16 Q. Who?</p> <p>17 A. We act as an enforcement agent for</p> <p>18 Denys Vlasenko.</p> <p>19 Q. Anyone besides Denys Vlasenko?</p> <p>20 A. At what time?</p> <p>21 Q. At any time.</p> <p>22 A. I believe that we, for some time,</p> <p>23 acted as an enforcement agent for Rob Landley.</p> <p>24 Q. Does the Conservancy act as Rob</p> <p>25 Landley's enforcement agent today?</p>	Page 97	<p>1 BRADLEY M. KUHN</p> <p>2 Matt Kraai.</p> <p>3 Q. Any reason to doubt that it is not?</p> <p>4 A. I have no reason to doubt that.</p> <p>5 Q. Do you see that the date is</p> <p>6 March 14th, 2010?</p> <p>7 A. I see that's the date on this page.</p> <p>8 Q. Directing your attention to the second</p> <p>9 paragraph, do you see that you've written</p> <p>10 specifically: "If you are interested, you could</p> <p>11 assign your existing copyrights on BusyBox to the</p> <p>12 Software Freedom Conservancy"?</p> <p>13 A. I'm sorry, can you point me to that</p> <p>14 paragraph? I've lost my place here.</p> <p>15 Q. Second paragraph.</p> <p>16 A. Okay.</p> <p>17 Yes, I see it -- I see that.</p> <p>18 Q. Do you see that in this paragraph you</p> <p>19 also go on to say that: "This would help us in a</p> <p>20 few ways. First, occasionally, it would be</p> <p>21 helpful for Conservancy to act as the -- an</p> <p>22 official copyright holder, rather than merely</p> <p>23 Denys Vlasenko's and Erik Andersen's enforcement</p> <p>24 agent (which is Conservancy's current designation</p> <p>25 in this matter)."</p>

25 (Pages 94 to 97)

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Page 102	<p>1 BRADLEY M. KUHN</p> <p>2 understand. Let me rephrase.</p> <p>3 BY MS. ROBERG-PEREZ:</p> <p>4 Q. Mr. Kuhn, has the Conservancy asked</p> <p>5 any other author of a copyright in BusyBox and not</p> <p>6 represented by the Conservancy to assign their</p> <p>7 copyrights to the Conservancy -- strike that.</p> <p>8 Strike that. Let me rephrase.</p> <p>9 Have you -- has the Conservancy asked</p> <p>10 any other author of a copyright in BusyBox who is</p> <p>11 not represented by the Software Freedom Law Center</p> <p>12 to assign their copyright to the Conservancy?</p> <p>13 MR. WILLIAMSON: Objection.</p> <p>14 Calls for speculation.</p> <p>15 Q. If you know.</p> <p>16 A. Yes.</p> <p>17 Q. Who?</p> <p>18 A. Glen McGrath.</p> <p>19 Q. Anybody else?</p> <p>20 A. I'm having difficulty answering</p> <p>21 because your question said not represented by the</p> <p>22 Software Freedom Law Center, and I am not privy to</p> <p>23 all clients of the Software Freedom Law Center.</p> <p>24 Q. Okay.</p> <p>25 Let's try it this way: I -- I don't</p>	Page 104	<p>1 BRADLEY M. KUHN</p> <p>2 restated it. I apologize.</p> <p>3 Q. Let me try it again.</p> <p>4 Has the Conservancy asked any other</p> <p>5 BusyBox author for an assignment of copyright in</p> <p>6 BusyBox besides Matt Kraai and Glen McGrath?</p> <p>7 A. Yes.</p> <p>8 Q. Who?</p> <p>9 A. Russ Dill.</p> <p>10 Q. Anybody else?</p> <p>11 A. No one else that's not a client of the</p> <p>12 Software Freedom Law Center.</p> <p>13 Q. And you've already testified that Matt</p> <p>14 Kraai did not assign copyright to the Conservancy,</p> <p>15 correct?</p> <p>16 A. Yes, that's what I testified.</p> <p>17 Q. Glen McGrath didn't either, did he?</p> <p>18 A. No.</p> <p>19 Q. And Russ Dill did not assign to the</p> <p>20 Conservancy the copyright in BusyBox either, did</p> <p>21 he?</p> <p>22 A. No.</p> <p>23 Q. Okay.</p> <p>24 To your knowledge, there has not been</p> <p>25 an exclusive license granted by Mr. Andersen to</p>
Page 103	<p>1 BRADLEY M. KUHN</p> <p>2 want you to divulge any attorney-client privileged</p> <p>3 information that you would have received from your</p> <p>4 attorneys. Maybe we can focus just on</p> <p>5 communications that you have had with BusyBox</p> <p>6 authors -- okay -- outside the presence of your</p> <p>7 attorneys.</p> <p>8 Who besides Matt Kraai and Glen</p> <p>9 McGrath have you spoken to about obtaining a</p> <p>10 copyright assignment on BusyBox?</p> <p>11 A. I -- I think you mispronounced his</p> <p>12 name. It's Glen McGrath.</p> <p>13 Q. Glen McGrath.</p> <p>14 Besides Glen McGrath and Matt Kraai,</p> <p>15 can you identify any other author that the</p> <p>16 Conservancy has requested an assignment from?</p> <p>17 A. Yes.</p> <p>18 Q. Who?</p> <p>19 A. No, I'm sorry, you -- you changed the</p> <p>20 question there. You said that has received an</p> <p>21 assignment from?</p> <p>22 Q. Strike that.</p> <p>23 Let me try --</p> <p>24 A. And I -- I -- I think I answered</p> <p>25 incorrectly because the question changed when you</p>	Page 105	<p>1 BRADLEY M. KUHN</p> <p>2 his copyrights in BusyBox, correct?</p> <p>3 MR. WILLIAMSON: Objection.</p> <p>4 Calls for a legal conclusion.</p> <p>5 Q. You may answer.</p> <p>6 A. My understanding is the GPL is a</p> <p>7 public license, hence the name, and is, therefore,</p> <p>8 not an exclusive license.</p> <p>9 Q. Okay.</p> <p>10 You were at Mr. Andersen's deposition</p> <p>11 on October 29th, correct?</p> <p>12 A. Yes.</p> <p>13 Q. So, you're aware that he testified</p> <p>14 that BusyBox is licensed under the GPL Version 2,</p> <p>15 correct?</p> <p>16 A. Yes.</p> <p>17 Q. And you're aware that he also</p> <p>18 testified that BusyBox is only licensed under the</p> <p>19 GPL Version 2, correct?</p> <p>20 A. I don't recall that sweeping of a</p> <p>21 statement was his testimony.</p> <p>22 Q. Well, do you have any reason to</p> <p>23 disagree with the statement that BusyBox is</p> <p>24 licensed under the GPL Version 2?</p> <p>25 A. It likely depends on the specific</p>

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<p style="text-align: right;">Page 190</p> <p>1 BRADLEY M. KUHN</p> <p>2 Conservancy.</p> <p>3 Q. Anything else?</p> <p>4 A. I'm sure I could think of more if I</p> <p>5 tried, but those are probably sufficient for these</p> <p>6 purposes.</p> <p>7 Q. Okay. Let's go back to the reasons</p> <p>8 that you've testified to.</p> <p>9 You have said that sometimes thousands</p> <p>10 upon thousands of users have been impacted.</p> <p>11 Aside from Denver Gingrich, who</p> <p>12 reported the violation -- the alleged violation of</p> <p>13 the Best Buy products, can you name any other user</p> <p>14 of the Insignia product that has been adversely</p> <p>15 impacted?</p> <p>16 A. I don't know any of them by name, no.</p> <p>17 Q. Okay.</p> <p>18 You also spoke about young people</p> <p>19 being able to advance and improve their skills as</p> <p>20 computer scientists, correct?</p> <p>21 A. Yes.</p> <p>22 Q. Can you give me a single name of a</p> <p>23 young person who, because of the sale of an</p> <p>24 accused Insignia device, has not been able to</p> <p>25 advance and improve his or her skills?</p>	<p style="text-align: right;">Page 192</p> <p>1 BRADLEY M. KUHN</p> <p>2 copy of the GPL, because it wasn't included in</p> <p>3 your Insignia products.</p> <p>4 Q. But has the sale of the Insignia</p> <p>5 products prevented the Conservancy from</p> <p>6 advocating?</p> <p>7 A. It's better characterized as a very</p> <p>8 large missed opportunity in that, as a extremely</p> <p>9 small nonprofit organization, and indeed, as a set</p> <p>10 of the extremely small nonprofit organizations,</p> <p>11 including the Free Software Foundation in that</p> <p>12 analysis, it's hard for us to reach everyone.</p> <p>13 One of the reasons that we've written</p> <p>14 free software and licensed it under the GPL, and</p> <p>15 required that the GPL go along with it, is -- is a way</p> <p>16 to reach more people, because by terms of the license</p> <p>17 you have to include it and tell people about free</p> <p>18 software.</p> <p>19 So, you've taken that opportunity from</p> <p>20 us.</p> <p>21 Q. Does Conservancy have access to a</p> <p>22 website?</p> <p>23 MR. WILLIAMSON: Objection.</p> <p>24 Vague.</p> <p>25 Q. Does the Conservancy have access to a</p>
<p style="text-align: right;">Page 191</p> <p>1 BRADLEY M. KUHN</p> <p>2 A. Without doing substantial market</p> <p>3 research, I can't answer that question.</p> <p>4 Q. So the answer is, as you sit here</p> <p>5 today, is no, correct?</p> <p>6 A. That's correct.</p> <p>7 Q. And you also spoke about how a large</p> <p>8 part of the free software movement is advocating</p> <p>9 for people's rights under the free software</p> <p>10 movement.</p> <p>11 Has the sale of the accused devices in</p> <p>12 any way prevented the Conservancy from advocating?</p> <p>13 A. Yes.</p> <p>14 Q. How has the sale of the accused</p> <p>15 devices prevented actions by the Conservancy for</p> <p>16 the Conservancy to advocate?</p> <p>17 A. Oftentimes, when people receive a</p> <p>18 device -- and I've witnessed this in the past --</p> <p>19 and learn about the GPL, they often get in touch</p> <p>20 with organizations such as Conservancy and Free</p> <p>21 Software Foundation, which we've also talked</p> <p>22 about, to learn more.</p> <p>23 I would argue that many potential</p> <p>24 people who might have learned about the GPL did</p> <p>25 not learn about it, because they did not receive a</p>	<p style="text-align: right;">Page 193</p> <p>1 BRADLEY M. KUHN</p> <p>2 website?</p> <p>3 A. We have an Internet connection at our</p> <p>4 offices, yes.</p> <p>5 Q. Does the Conservancy have the ability</p> <p>6 to post information about the GPL on a website?</p> <p>7 A. Yes.</p> <p>8 Q. Okay.</p> <p>9 Do you know if the sale of accused</p> <p>10 devices in this litigation has decreased --</p> <p>11 decreased the number of people using BusyBox code</p> <p>12 that Mr. Andersen wrote?</p> <p>13 A. What do you mean by "Using"?</p> <p>14 Q. Are there individuals that because of</p> <p>15 the sale of accused devices in this litigation</p> <p>16 cannot access code that Mr. Andersen wrote?</p> <p>17 A. What do you mean by "Access"?</p> <p>18 Q. Is code that Mr. Andersen wrote, to</p> <p>19 your knowledge, available today on BusyBox.net?</p> <p>20 A. Yes.</p> <p>21 Q. Okay.</p> <p>22 Do you recall whether Best Buy was</p> <p>23 notified of the alleged infringement prior to the</p> <p>24 Conservancy and Mr. Andersen filing suit?</p> <p>25 MR. RAVICHER: In what capacity?</p>

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